

CRIMINAL YEAR SEMINAR

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2016 CRIMINAL SUBSTANTIVE LAW UPDATE

Presented By:

The Honorable Michael R. McVey

Maricopa County Superior Court (Retired)

&

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2017 Criminal substantive law update

The Honorable Michael McVey, Retired Judge of the Maricopa County Superior Court
Linley Wilson, Assistant Arizona Attorney General

13-103. Abolition of common law offenses and affirmative defenses; definition

B. For the purposes of this section, "affirmative defense" means a defense that is offered and that attempts to excuse the criminal actions of the accused or another person for whose actions the accused may be deemed to be accountable. Affirmative defense does not include any justification defense pursuant to chapter 4 of this title or any defense that either denies an element of the offense charged or denies responsibility, including alibi, misidentification or lack of intent.

13-205. Affirmative defenses; justification; burden of proof

A. Except as otherwise provided by law, a defendant shall prove any affirmative defense raised by a preponderance of the evidence. Justification defenses under chapter 4 of this title are not affirmative defenses. Justification defenses describe conduct that, if not justified, would constitute an offense but, if justified, does not constitute criminal or wrongful conduct. If evidence of justification pursuant to chapter 4 of this title is presented by the defendant, the state must prove beyond a reasonable doubt that the defendant did not act with justification.

State v. Holle, 240 Ariz. 300, 379 P.3d 197 (2016)

Issue: In prosecution for sexual abuse and child molestation, is the Defendant's lack of motivation by sexual interest an affirmative defense, which the Defendant must prove by a preponderance of the evidence; or is motivation by sexual interest an element of the crime which the state must prove beyond a reasonable doubt?

13-105(22). "Historical prior felony conviction" means:

(d) Any felony conviction that is a third or more prior felony conviction. For the purposes of this subdivision, "prior felony conviction" includes any offense committed outside the jurisdiction of this state that was punishable by that jurisdiction as a felony.

(e) Any offense committed outside the jurisdiction of this state that was punishable by that jurisdiction as a felony and that was committed within the five years immediately preceding the date of the present offense.

13-703. Repetitive offenders; sentencing

C. Except as provided in § 13-704 or 13-705, a person shall be sentenced as a category three repetitive offender if the person is at least eighteen years of age or has been tried as an adult and stands convicted of a felony and has two or more historical prior felony convictions.

13-703. Repetitive offenders; sentencing

M. A person who has been convicted in any court outside the jurisdiction of this state of an offense that was punishable by that jurisdiction as a felony is subject to this section. A person who has been convicted as an adult of an offense punishable as a felony under the provisions of any prior code in this state or the jurisdiction in which the offense was committed is subject to this section. A person who has been convicted of a felony weapons possession violation in any court outside the jurisdiction of this state that would not be punishable as a felony under the laws of this state is not subject to this section.

State v. Johnson, 240 Ariz. 402, 380 P.3d 99 (App. 2016)

Issue: Where the State proved that the defendant had six prior felony convictions from Colorado that occurred more than five years before he committed the instant offense, did the trial court commit fundamental error when it sentenced him as a category three repetitive offender?

13-107. Time limitations

B. Except as otherwise provided in this section and section 28-672, prosecutions for other offenses must be commenced within the following periods after actual discovery by the state or the political subdivision having jurisdiction of the offense or discovery by the state or the political subdivision that should have occurred with the exercise of reasonable diligence, whichever first occurs:

1. For a class 2 through a class 6 felony, seven years.

State v. Neese, 239 Ariz. 84, 366 P.3d561 (App. 2016)

Issue: Is a "John Doe" indictment that identifies a defendant with a unique DNA profile, sufficient to toll the statute of limitations?

13-206. Entrapment

A. It is an affirmative defense to a criminal charge that the person was entrapped. To claim entrapment, the person must admit by the person's testimony or other evidence the substantial elements of the offense charged.

B. A person who assert an entrapment defense has the burden of proving the following by clear and convincing evidence:

1. The idea of committing the offense started with law enforcement officers or their agents rather than with the person.
2. The law enforcement officers or their agents urged and induced the person to commit the offense.
3. The person was not predisposed to commit the type of offense charged before the law enforcement officers or their agents urged and induced the person to commit the offense.

13-206. Entrapment

C. A person does not establish entrapment if the person was predisposed to commit the offense and the law enforcement officers or their agents merely provided the person with an opportunity to commit the offense. It is not entrapment for law enforcement officers or their agents merely to use a ruse or to conceal their identity. The conduct of law enforcement officers and their agents may be considered in determining if a person has proven entrapment.

State v. Gray, 239 Ariz. 475, 372 P.3d 999 (2016)

Issue: Was the defendant entitled to an entrapment instruction, where he merely declined to challenge the State's evidence at trial, which included an audio recording of incriminating statements he made to an undercover officer?

13-501. Persons under eighteen years of age; felony charging; definitions

A. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. First degree murder in violation of section 13-1105.
2. Second degree murder in violation of section 13-1104.
3. Forcible sexual assault in violation of section 13-1406.
4. Armed robbery in violation of section 13-1904.
5. Any other violent felony offense.
6. Any felony offense committed by a chronic felony offender.
7. Any offense that is properly joined to an offense listed in this subsection.

13-1904. Armed robbery; classification

A. A person commits armed robbery if, in the course of committing robbery as defined in section 13-1902, such person or an accomplice:

1. Is armed with a deadly weapon or a simulated deadly weapon; or
2. Uses or threatens to use a deadly weapon or dangerous instrument or a simulated deadly weapon.

McGuire v. Lee (State), 239 Ariz. 384, 373 P.3d 328 (App. 2016)

Issue: Is a juvenile who 15 years or older, and who employs a simulated weapon (a toy gun) during the course of an armed robbery, subject to mandatory prosecution as an adult, pursuant to ARS 13-1901 (A)?

13-603. Authorized disposition of offenders

C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court and in the manner as determined by the court or the court's designee pursuant to chapter 8 of this title. Restitution ordered pursuant to this subsection shall be paid to the clerk of the court for disbursement to the victim and is a criminal penalty for the purposes of a federal bankruptcy involving the person convicted of an offense.

13-603. Authorized disposition of offenders

State v. Leon, 240 Ariz. 492, 381 P.3d 286 (App. 2016)

Issue: Did the trial court violate the defendant's Sixth Amendment right to a jury trial and therefore, commit fundamental error, when it ordered the defendant to pay restitution in the amount of \$195,670, where the jury's verdict expressly found the property that was subject of the theft had a value of \$25,000 or more, but less than \$100,000?

13-705. Dangerous crimes against children; sentences; definitions

D. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving aggravated assault, unlawful mutilation, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, aggravated luring a minor for sexual exploitation, child abuse or kidnapping shall be sentenced to a term of imprisonment as follows:

Minimum	Presumptive	Maximum
10 years	17 years	24 years

13-705. Dangerous crimes against children; sentences; definitions

J. Notwithstanding chapter 10 of this title, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the second degree pursuant to subsection B, C or D of this section is guilty of a class 3 felony and if the person is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

Minimum	Presumptive	Maximum
5 years	10 years	15 years

O. A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree.

13-1002. Solicitation; classifications

A. A person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, commits solicitation if, with the intent to promote or facilitate the commission of a felony or misdemeanor, such person commands, encourages, requests or solicits another person to engage in specific conduct which would constitute the felony or misdemeanor or which would establish the other's complicity in its commission.

Wright v. Gates (State), 240 Ariz. 525, 382 P.3d 83 (App. 2016)

Issue: Is a person convicted of Solicitation to Commit Child Molestation, guilty of a Dangerous Crime Against Children?

13-707. Misdemeanors; sentencing

A. A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:

1. For a class 1 misdemeanor, six months.
2. For a class 2 misdemeanor, four months.
3. For a class 3 misdemeanor, thirty days.

13-707. Misdemeanors; sentencing

B. A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of any misdemeanor or petty offense, other than a traffic offense, and who has been convicted of one or more of the same misdemeanors or petty offenses within two years next preceding the date of the present offense shall be sentenced for the next higher class of offense than that for which the person currently is convicted. Time spent incarcerated within the two years next preceding the date of the offense for which a person is currently being sentenced shall not be included in the two years required to be free of convictions.

13-707. Misdemeanors; Sentencing

C. If a person is convicted of a misdemeanor offense and the offense requires enhanced punishment because it is a second or subsequent offense, the court shall determine the existence of the previous conviction. The court shall allow the allegation of a prior conviction to be made in the same manner as the allegation prescribed by § 28-1387, subsection A.

13-707. Misdemeanors; Sentencing

State v. Gulley, 240 Ariz. 580, 382 P.3d 795 (App. 2016) [PR Pending]
 State v. Ceasar, 241 Ariz. 66, 383 P.3d 1140 (App. 2016)

Issue: When a defendant stands convicted of a misdemeanor and has been convicted of one or more of the "same misdemeanors" within two years preceding the date of the instant offense, is his conviction classified as a misdemeanor or a felony? And (in Gulley): Was the defendant entitled to appellate review of his claim that he was entitled to a new trial because the jury, not the court, found that he was previously convicted of a misdemeanor, where he invited the error?

13-2904. Disorderly conduct; classification

- A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:
1. Engages in fighting, violent or seriously disruptive behavior; or
 2. Makes unreasonable noise; or
 3. Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or
 4. Makes any protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession; or
 5. Refuses to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, a hazard or any other emergency; or
 6. Recklessly handles, displays or discharges a deadly weapon or dangerous instrument.

13-2904. Disorderly Conduct; Classification

B. Disorderly conduct under subsection A, paragraph 6 is a class 6 felony. Disorderly conduct under subsection A, paragraph 1, 2, 3, 4, or 5 is a class 1 misdemeanor.

State v. Gulley, 240 Ariz. 580, 382 P.3d 795 (App. 2016)

Issue: Is disorderly conduct a unitary offense, and therefore, was the evidence sufficient to support the jury's finding that the defendant was previously convicted of the "same misdemeanor" for purposes of A.R.S. § 13-707(B)?

13-902. Periods of probation; monitoring; fees

C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time before the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than five years.
2. For a misdemeanor, not more than two years.

13-902. Periods of probation; monitoring; fees

State v. Turner, 239 Ariz. 390, 3372 P.3d 334 (App. 2016)

Issue: If a defendant has failed to pay restitution, may the trial court extend the period of probation, and continue, modify, or add conditions of probation not related to the payment of restitution?

13-1105. First degree murder; classification

A. A person commits first degree murder if:

2. Acting either alone with one or more other persons the person commits or attempts to commit . . . child abuse under § 13-3623, subsection A, paragraph 1 . . . and, in the course of and in furtherance of the offense or immediate flight from the offense, the person or another person causes the death of any person.

State v. Martinson, 241 Ariz. 93, 384 P.3d 307 (App. 2016)

Issue: Because the State was entitled to pursue a theory that the defendant committed the predicate felony of child abuse with intent to kill the 5 year-old victim, not merely injure him, for purposes of felony murder, did the trial court err in dismissing the case with prejudice based on prosecutorial misconduct?

13-1405. Sexual conduct with a minor; classification

A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.

13-1401. Definitions; factors

A. In this chapter, unless the context otherwise requires:

3. "Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.
4. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.

State v. Florez, 241 Ariz. 121, 383 P. 3d 335 (App. 2016)

Issue: Does the Defendant's act of intentionally or knowingly rubbing his clothed genitals against the clothed buttocks of another person, meet Arizona's definition of "sexual intercourse?"

13-1501. Definitions

In this chapter, unless the context otherwise requires:

3. "Entry" means the intrusion of any part of any instrument or any part of a person's body inside the external boundaries of a structure or unit of real property.

13-1507. Burglary in the second degree; classification

A. A person commits burglary in the second degree by entering or remaining unlawfully in or on a residential structure with the intent to commit any theft or any felony therein.

13-1508. Burglary in the first degree; classification

A. A person commits burglary in the first degree if such person or an accomplice violates the provisions of either § 13-1506 or 13-1507 and knowingly possesses explosives, a deadly weapon or a dangerous instrument in the course of committing any theft or any felony.

B. Burglary in the first degree of a nonresidential structure or a fenced commercial or residential yard is a class 3 felony. It is a class 2 felony if committed in a residential structure.

State v. Decker, 239 Ariz. 29, 365 P.3d 954 (App. 2016)

Issue: Does firing a bullet into a residence constitute "entry" for purposes of first-degree burglary?

13-1505. Possession of burglary tools; master key; manipulation key; classification

A. A person commits possession of burglary tools by:

1. Possessing any explosive, tool, instrument or other article adapted or commonly used for committing any form of burglary as defined in sections 13-1506, 13-1507 and 13-1508 and intending to use or permit the use of such an item in the commission of a burglary.

State v. O'Laughlin, 239 Ariz. 398, 372 P.3d 342 (App. 2016)

Issue: Is an indictment which charges a defendant with possession of multiple burglary tools, an impermissibly duplicitous indictment?

13-1805. Shoplifting; detaining suspect; defense to wrongful detention; civil action by merchant; public services; classification

I. A person who in the course of shoplifting uses an artifice, instrument, container, device or other article with the intent to facilitate shoplifting or who commits shoplifting and who has previously committed or been convicted within the past five years of two or more offenses involving burglary, shoplifting, robbery, organized retail theft or theft is guilty of a class 4 felony.

In re C.D., 239 Ariz. 240, 377 P.3d 1034 (App. 2016)

Issue: Is a person who has been twice adjudicated delinquent for shoplifting within the past five years, subject to prosecution for a Class 4 felony, for a third offense committed within five years?

13-2508. Resisting arrest; classification; definition

A. A person commits resisting arrest by intentionally preventing or attempting to prevent a person reasonable known to him to be a peace officer, acting under color of such peace officer's official authority, from effecting an arrest by:

1. Using or threatening to use physical force against the peace officer or another.
2. Using any other means creating a substantial risk of causing physical injury to the peace officer or another.
3. Engaging in passive resistance.

13-2508. Resisting arrest; classification; definition

- B. Resisting arrest pursuant to subsection A, paragraph 1 or 2 of this section is a class 6 felony. Resisting arrest pursuant to subsection A, paragraph 3 of this section is a class 1 misdemeanor.
- C. For the purposes of this section, "passive resistance" means a nonviolent physical act or failure to act that is intended to impede, hinder or delay the effecting of an arrest.

State v. Jurden, 239 Ariz. 526, 373 P.3d 543 (2016)

Issue: Does the Double Jeopardy Clause allow multiple convictions and punishments for a defendant who resisted arrest in the course of a single, continuous event, regardless of the number of officers involved?

13-3102. Misconduct involving weapons; defenses; classification; definitions

- A. A person commits misconduct involving weapons by knowingly:
- ...
4. Possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor;

13-3101. Definitions

- A. In this chapter, unless the context otherwise requires:
7. "Prohibited possessor" means any person:
 - (b) Who has been convicted within or without this state of a felony or who has been adjudicated delinquent for a felony and whose civil right to possess or carry a gun or firearm has not been restored.

State v. Ingram, 239 Ariz. 228, 368 P. 3d 936 (App. 2016)

Issue: What evidence is sufficient for the State to prove beyond a reasonable doubt, that a prohibited possessor possessed a deadly weapon or prohibited weapon?

13-3961. Offenses not bailable; purpose; preconviction; exceptions

A. A person who is in custody shall not be admitted to bail if the proof is evident or the presumption great that the person is guilty of the offense charged and the offense charged is one of the following:

1. A capital offense.
 2. Sexual assault.
 3. Sexual conduct with a minor who is under fifteen years of age.
- Simpson v. Miller (State)*, 241 Ariz. 341, 2017 WL 526027 (2017) (vacated)

Issue: Does ARS § 13-3961 (A) (3), which categorically denies bail to all persons charged with Sexual Conduct With a Minor, where the proof is evident or the presumption great that the accused committed the offense, a denial of due process, as guaranteed by the 14th Amendment of the United States Constitution?

13-3102. Misconduct involving weapons; defenses; classification; definitions

A. A person commits misconduct involving weapons by knowingly:

- 8. Using or possessing a deadly weapon during the commission of any felony offense included in chapter 34 of this title;

13-3407. Possession, use, administration, acquisition, sale, manufacture or transportation of dangerous drugs; classification

A. A person shall not knowingly:

- 1. Possess or use a dangerous drug.
- 2. Possess a dangerous drug for sale.
- 3. Possess equipment or chemicals, or both, for the purpose of manufacturing a dangerous drug.
- 4. Manufacture a dangerous drug.
- 5. Administer a dangerous drug to another person.
- 6. Obtain or procure the administration of a dangerous drug by fraud, deceit, misrepresentation or subterfuge.
- 7. Transport for sale, import into this state or offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer a dangerous drug.

13-3407. Possession, use, administration, acquisition, sale, manufacture or transportation of dangerous drugs; classification

E. If the person is convicted of a violation of subsection A, paragraph 2, 3, 4 or 7 of this section and the drug involved is methamphetamine, the person shall be sentenced as follows:

Minimum	Presumptive	Maximum
5 calendar years	10 calendar years	15 calendar years

F. A person who is convicted of a violation of subsection A, paragraph 4 of this section or subsection A, paragraph 2, 3, or 7 of this section involving methamphetamine is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to 5 41-1604.07 or the sentence is commuted.

13-3407. Possession, use, administration, acquisition, sale, manufacture or transportation of dangerous drugs; classification

State v. Gutierrez, 240 Ariz. 460, 381 P.3d 254 (App. 2016)

Issue: Did a Double Jeopardy violation occur when the defendant was convicted and sentenced on two counts of misconduct involving weapons, where he possessed two weapons during the commission of a felony drug offense? And, when a defendant is convicted of transporting methamphetamine for sale, is the trial court required to impose a flat-time sentence?

28-1321. Implied consent; tests; refusal to submit to test; order of suspension; hearing; review; temporary permit; notification of suspension; special ignition interlock restricted driver license

A. A person who operates a motor vehicle in this state gives consent, subject to § 4-244, paragraph 34 or § 28-1381, 28-1382 or 28-1383, to a test or tests of the person's blood, breath, urine or other bodily substance for the purpose of determining alcohol concentration or drug content if the person is arrested for any offense arising out of acts alleged to have been committed in violation of this chapter or § 4-244, paragraph 34 while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs.

28-1321. Implied consent; tests; refusal to submit to test; order of suspension; hearing; review; temporary permit; notification of suspension; special ignition interlock restricted driver license

(A. continued) . . . The test or tests chosen by the law enforcement agency shall be administered at the direction of a law enforcement officer having reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle in this state either:

1. While under the influence of intoxicating liquor or drugs.
2. If the person is under twenty-one years of age, with spirituous liquor in the person's body.

28-1321. Implied consent; tests; refusal to submit to test; order of suspension; hearing; review; temporary permit; notification of suspension; special ignition interlock restricted driver license

B. After an arrest a violator shall be requested to submit to and successfully complete any test or tests prescribed by subsection A of this section, and if the violator refuses the violator shall be informed that the violator's license or permit to drive will be suspended or denied for twelve months, or for two years for a second or subsequent refusal within a period of eighty-four months, unless the violator expressly agrees to submit to and successfully completes the test or tests. . . .

28-1321. Implied consent; tests; refusal to submit to test; order of suspension; hearing; review; temporary permit; notification of suspension; special ignition interlock restricted driver license

State v. Valenzuela, 239 Ariz. 299, 371 P.3d 627 (2016)

Issue: Where a police officer advises a driver arrested for DUI that "Arizona law requires you to submit" to breath, blood, or other bodily substance tests chosen by law enforcement, does the State prove that the arrestee's consent was freely and voluntarily given by showing that the consent was given in response to this admonition? And, should the test results in this case be excluded, where the officer had an objectively reasonable good-faith belief that his conduct was lawful?

28-1321. Implied consent; tests; refusal to submit to test; order of suspension; hearing; review; temporary permit; notification of suspension; special ignition interlock restricted driver license

State v. Navarro, 241 Ariz. 19, 382 P.3d 1234 (App. 2016)

Issue: In light of the U.S. Supreme Court's decision in *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016)--holding a warrantless breath test is permissible as a search incident to a lawful DUI arrest--was the defendant entitled to suppression of the results of his breath test, irrespective of the validity of his consent to the test and the applicability of the good-faith exception?

28-1323. Admissibility of breath test or other records

A. The results of a breath test administered for the purpose of determining a person's alcohol concentration are admissible as evidence in any trial, action or proceeding on establishing the following foundational requirements:

...

5. The device used to conduct the test was in proper operating condition. Records of periodic maintenance that show that the device was in proper operating condition are admissible in any proceeding as prima facie evidence that the device was in proper operating condition at the time of the test. Calibration checks with a standard alcohol concentration solution bracketing each person's duplicate breath test are one type of records of periodic maintenance that satisfies the requirements of this section. The records are public records.

28-1323. Admissibility of breath test or other records

State v. Peraza, 239 Ariz. 140, 366 P.3d 1030 (App. 2016)

Issue(s): Does a jury instruction which advises the jury that periodic maintenance records provide prima facie evidence that the breath testing device was in proper condition at the time of the defendant's test, a correct statement of the law; and does such an instruction improperly shift the State's burden of proof?

28-1381. Driving or actual physical control while under the influence; trial by jury; presumptions; admissible evidence; sentencing; classification

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state under any of the following circumstances:

...

3. While there is any drug defined in section 13-3401 or its metabolite in the person's body.

36-2802. Arizona Medical Marijuana Act; limitations
(Caution: 1998 Prop. 105 applies)

This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal or other penalties for engaging in, the following conduct:

D. Operating, navigating or being in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana, except that a registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.

36-2802. Arizona Medical Marijuana Act; limitations
(Caution: 1998 Prop. 105 applies)

Ishak v. McClennen, 241 Ariz. 364, 388 P.3d 1 (2016)

Issue: Is Defendant entitled to present the affirmative defense that the amount of marijuana metabolite in his bloodstream was insufficient to cause impairment?
